No. 91-741

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER 1991

STANLEY C. MANN, PRO SE.,
PETITIONER,

v.

JUDGES RIGTRUP, ET ALL,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

# REPLY TO BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

The question before this Court has been and continues to be: Whether or not the intentional commission of criminal acts, and subornation of criminal acts, violated Appellant Mann's Civil Rights, more specifically enumerated under Questions Presented for Review, Numbers 1 through 18, in Petitioners Writ of Certiorari to the United States Supreme Court.

**LIST OF PARTIES**

The parties to the proceedings below were the petitioner Stanley C. Mann respondents Judges, Kenneth Rigtrup, David B. Dee, Philip R. Fishler, Regnal W. Garff, Russell W. Bench, Judith M. Billings, Gordon R. Hall, Pamela Greenwood, J. Robert Bullock, Robert L. Newey, Dennis J. Frederick, John A. Rokich, Watkiss & Campbell Inc., H. Wayne Wadsworth, Stephen A. Trost, David S. Young, Christensen Jensen & Powell Inc., Ray R. Christensen, Holme, Roberts & Owen Inc., Brent V. Manning, Insurance by North America, and Does 1-10.

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**Cases**

**JURISDICTION**

The First Amendment to the United States Constitution states that petitioner has the right:

> " . . . to petition the Government for a redress of grievances. . .".

The Fourteenth Amendment to the United States Constitution states that no State shall:

> ". . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . .".

On October 18, 1989, Appellant filed this action in the District Court of Utah. Writ, Exh. D-4. The District Court stated:

> "This Court is without jurisdiction to hear those arguments in which the plaintiff seeks to have the state court orders set aside. **The Court will therefore not consider any of the claims in which Mann alleges that state court decisions were either substantively or procedurally defective.**" (Emphasis added).
>
> **"The Tenth Circuit has held that review of state court judgments in judicial proceedings may only be had in the United States Supreme Court.** Van Sickle v. Holloway, 791 F.2d 1431, 1436 (10th Cir. 1986). "Federal district courts do not have jurisdiction over challenges to state-court decisions in particular cases

> arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional.'" Id. (quoting District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983)). (Emphasis added).

On June 21, 1990, appellant was informed by the United States Supreme Court that:

> "Appellant's action could not be filed directly with the United States Supreme Court but would have to be filed with the United States Court of Appeals for the Tenth Circuit and come through the Court of Appeals to the United States Supreme Court".

The U.S. Court of Appeals for the 10th Cir. held that the Federal District Court was without jurisdiction to review Mann's arguments. Writ of Certiorari, Exh. A-3.

> ". . . Plainly, the federal district court was without jurisdiction to perform such a task, **which is reserved to the Supreme Court. . .**" (Emphasis added)

If Appellant Mann is guaranteed Constitutional Rights as listed in the First Amendment and the Fourteenth Amendment, and WHEREAS; the District Court, the U.S. Court of Appeals for the 10th Cir. and the defendant judges (repeatedly) have refused to review the allegations on the basis the Supreme Court of

the United States **only** has jurisdiction, the Writ of Certiorari was properly brought before THIS COURT.

**SUMMARY OF ARGUMENT**

Committing criminal acts, or intentionally violating another's Constitutional Rights, is not valid just because they were committed by a member of the legal or judicial profession. Defendants' ascertain that these actions comprise elements of "zealous advocacy" is repugnant and without merit. **No One** is immune from violating another's civil rights or in the commission of felonious criminal actions, regardless, if they are a member of the legal or judiciary professions. Defendants (individuals and judges) have not denied allegation of criminal wrong doing or violation of Civil Rights, they claim only that these acts were justified as zealous advocacy or immunity. To condone such behavior under the guise of "zealous advocacy" or immunity is ludicrous and contrary to the Constitution of the United States.

No one could say it any better than one of the judiciary's own, The Honorable Judge Fay of the United States Court of Appeals for the Eleventh Circuit.

> ". . . Appellant is a member of one of our nation's most respected law firms. Clearly, he should have known his conduct was totally abhorrent to the standards in our profession. No client-large or small, rich or poor, with or without influence-can be allowed to corrupt our system of jurisprudence to protect his, her or its self interest".
>
> "It is my personal observation that too many practitioners have "Sold out to the client. . . Advocacy must be carried out within the rules . . ." Carlucci & Piper Aircraft Corp., Inc. 775 F.2d 1440 (1985).

**REBUTTAL ARGUMENT**

Defendants Brief in Opposition, P.2 & P.3

> "Mann ascribes criminal intent to zealous advocacy".
> ". . . Mann's complaint contained nothing but conclusory allegations to show agreement and concerted action between the private defendants and the state actor judges".

These statements are blatantly false and are known to be false by defendants. This is an intentional attempt to mislead the Court. The majority of the criminal acts alleged were by

defendants Watkiss & Campbell/Wadsworth, (hereinafter CJ&P/Wadsworth), Young, Trost, Christensen, Jensen & Powell/ Christensen, (hereinafter CJ&P/Christensen), and case manager(s) of INA, while they were not acting in any capacity as a counsel of record. App. A. - Argument I, P. 28-33, Amended Brief of Appellant filed in U.S. Court of Appeals for the 10th Cir. Mann's Complaint **does not rely only on judges as (State Actors)**. Documentation is irrefutable that defendants have committed the criminal acts of lying, perjury, destruction and alteration of evidence, extortion, bribery, subornation of criminal acts, prior censorship, changed a duly constituted law in a jury instruction, dismissed a duly subpoenaed material witness, violated a Confidential sealed court order, and conspired with state actors in the commission of criminal acts.

W&C/Wadsworth were guilty of lying, perjury, destruction and alteration of evidence, bribery, extortion, violating a confidential

sealed court order and misleading the court and counsel claims this was only advocacy. App. of Appellant Exh. 20, P. 4 (W&C bill to the Wheelers) filed in the U.S. Court of Appeals for the 10th Cir. W&C/Wadsworth attempted to frame Mann and his wife for conspiracy to commit attempted First Degree Murder of Wheeler. The early hours of Friday May 12, 1979, Wadsworth contacted one or more of the Los Angeles Detectives (State Actors). Early on Monday, May 14, 1991, Wadsworth made an ex-parte call on Judge Bryant Croft (State Actor) the judge who was sitting on the custody matter, Suit P79-2, and the only suit in which W&C/Wadsworth had any lawyer client relationship involving their family clients (Wheelers) or Mann, to inform him of the shooting and alleging it was tied into the custody case. However, Wadsworth testified and his counsel, CJ&P/Christensen filed repeated motions that all actions in the custody case were irrelevant & immaterial to the Malicious Prosecution suit or the Conspiracy to Commit

Murder Charge. On Monday, May 14, 1979, Wadsworth also contacted the Salt Lake County Sheriff (State Actor), Chief Deputy Sheriff Shepherd (State Actor) who according to Wadsworth was a friend of 20 years beginning during the time both were in the F.B.I. (According to Wadsworth's sworn testimony, he was very helpful), and U.S. Attorney Rencher (State Actor) alleging Mann was implicated in the shooting. On October 31, 1984, Wadsworth testified that the Salt Lake County Sheriff's Office (State Actors) in May of 1979 provided him with a blown up photo of Mann and a copy of Mann's driver's license. Wadsworth Deposition taken July 14, 1980, P. 15-28. App. of Appellant, Exh. No. 26, filed in the U.S. Court of Appeals for the 10th Cir. Wadsworth testified that Chief Deputy Shepherd (State Actor) took him back and introduced him to Salt Lake County Detective Thompson (State Actor) who provided him with a number of investigative materials. Writ of Certiorari, (hereinafter

Writ), Question No. 3. (This was the subpoenaed witness of Mann who was unconstitutionally dismissed by Judge Rokich, and the witness Judge Rokich would not allow his previously sworn testimony to be used). On May 18, 1979 and again on May 23, 1979 Wadsworth contacted Chief Deputy Sheriff Shepherd.

All of this took place three days prior to Silvi Wheeler (allegedly under hypnosis) stating she ran back outside after the shooting she saw Mann (who she had seen once as he left the court room in January of 1979) standing on a mound of dirt some 243 feet away at 10:45 p.m. **W&C/ Wadsworth had no lawyer client relationship with their family client relative to the shooting incident until over 8 months subsequent.** Wadsworth testified in the Libel Trial, on July 25, 1984 LIBEL TR*** P. 186, Lines 5 through 7, about his dealings with the Los Angeles Detectives, Pierce & Ritter (State Actors):

> ". . . They were very helpful to me in providing me with the information they had acquired in the course of their criminal investigation."

". . . They gave me many articles of investigation they had."

See also, LIBEL TR. P. 166-170, 378-381, Wadsworth's sworn deposition Feb. 22, 1982 P.141-143, 189, 191-194, 203-209, 211.

Wadsworth also gave sworn testimony, going into great detail describing how these **State Actors, (none of which are judges)** were acting in concert with him, in the trials held before Judge Fishler and Judge Rokich.

These actions on the part of W&C/Wadsworth in their representation in a **custody matter**, can not be ascribed to zealous advocacy. Christensen, Jensen & Powell/Christensen filed numerous pleadings on behalf of W&C/Wadsworth refusing to answer discovery questions on these matters on the basis the shooting and the custody case were not related and the court denied Mann discovery on the basis of those pleadings.

On May 16, 1980, Watkiss & Campbell/ Wadsworth filed a Motion to Withdraw as Counsel for their family clients (Wheelers) in Suit C79-

0772W in the Federal Court, using as part of their grounds that their family clients had "failed to honor their agreement to pay counsels' fees in the above mentioned suit".

Exh. 18, App. of appellant filed in the U.S. Court of Appeals for the 10th Cir. This was a false statement. Wadsworth's deposition P. 307, lines 2 through 15. This action was on a contingency fee basis with all costs being advanced by Watkiss & Campbell. The Motion was granted by the Honorable Judge David K. Winder on May 21, 1980 at 9:30 a.m. Writ, P. 19-20, Immediately **after being released** as counsel for the Wheelers, at their own request, W&C/ Wadsworth attempted to extort benefits from the Manns for **Watkiss & Campbell/Wadsworth**, who were no longer counsel for their family clients, offered to dismiss the suit of **their former clients** if the Manns would agree not to sue **W&C/Wadsworth**. (not their family clients). Zealous advocacy can not apply to actions taken relative to a case you are no longer counselor

in. Watkiss & Campbell/ Wadsworth **were never counsel for themselves** at any time. Writ, P. 30-36. Of the over 31 incidences where Wadsworth committed perjury, the overwhelming incidents were committed when Wadsworth was a witness testifying under oath, as a defendant or a plaintiff, and in no capacity which could ever be construed as zealous advocacy. Writ, P. 22-23, When Wadsworth was a defendant in Suit 225-141 entitled Stanley C. Mann vs. Mark Wheeler, Wayne Wadsworth and does I-XX (Watkiss & Campbell being one of the does), Wadsworth's bribery of Mann's attorneys, Belli & Choulas, could never be construed as advocacy on Wadsworth's part. Wadsworth had engaged Long & Levit, San Francisco, California, who he by-passed, making this bribery offer personally to Belli & Choulas through an interstate telephone conversation initiated by W&C/Wadsworth. Writ 43, 45, Writ, App. Y-1 & Y-2 also Exh. 44, App. of Appellant filed in the U.S. Court of Appeals for the 10th Cir. When W&C/Wadsworth destroyed

and altered evidence, W&C/Wadsworth were defendants and not acting in a role of advocacy for a client. In this pleading W&C/Wadsworth admitted to criminal acts rather than allow the evidence of their actions to be revealed. This pleading was prepared and filed by CJ&P/ Christensen. This pleading was not signed by the counsel of record in violation of URCP Rule 26 (g) and was the only pleading not signed by an attorney of record.

At the conclusion of the criminal action brought against Mann, Judge Rigtrup (State Actor), Michael Christensen, for Salt Lake County Attorney's Office prosecuting the case (State Actor) and Wadsworth were sequestered in Judge Rigtrup's office awaiting the jury verdict at 10:30 p.m.

Writ, P. 25-26. **CJ&P/Christensen** sent a letter of extortion to Mann's contractual customers. This was not an act of legal advocacy, but an act of extortion. Exh. 32B, App. of Appellant U.S. Court of Appeals for the

10th Cir. This letter was sent through the Federal Postal System and in some cases mailed across state boundaries. Using a Court sealed list for an unauthorized purpose of extortion can not be classified as zealous advocacy. Libel Tr. P. 94, 162, 163, 175 & 176. Requesting Judge Fishler (State Actor) to suborn lying and perjury and the evidence of perjury, are all criminal acts whether committed by a lawyer or anyone else. Writ, App. W1. This was a violation of Mann's Constitutional Rights. This was an act of fraud perpetrated on the jury by CJ&P/Christensen and Judge Fishler, and this fraudulent act of subornation was upheld by the Appellate Judges, Bench, Billings, Garff, and Hall, after being provided proof of the perjury and subornation. Writ, P. 30-33, Counsel, CJ&P/Christensen, encouraged the lying and perjury of Wadsworth by eliciting false answers to questions he posed, knowing full well from documentation which counsel had, that his client's answers that he would make to the jury

were lies and perjury. Exh. 39A & B, App. of Appellant filed in U.S. Court of Appeals for the 10th Cir. Shortly prior to this exchange, this document was filed. This cannot be construed as zealous advocacy. Writ, P. 43-45 & App. Y1 & Y2. There is no way that the criminal acts of destruction and alteration of evidence can be classified as merely "zealous" advocacy. Writ, P. 58-62. To petition the Court to violate another parties First Amendment rights to provide prior censorship of his manuscript and revision of his manuscript, is far in excess of zealous advocacy. This was pointed out to the Court and was upheld by Bench, Billings, Garff, and Hall.

Writ, P. 23-27. INA's case manager(s) consulted with C.J.&P/Christensen regarding means of "killing the book the fastest and cheapest means possible". They agreed to the strategy of sending the extortion letter, (using the Court sealed list to contact Mann's contractual customers). INA's case manager(s)

committed INA to pay the cost of writing and sending the letter. They also had a big financial interest in protecting Wadsworth's reputation.

Writ, P. 16-18. URCP, Rule 11. Holme, Roberts & Owen/Manning. (hereinafter HR&O/Manning) supplied known false statements in a pleading and continued to use these same false statements after it had been proven they were false, is a violation of the law, and is beyond the inclusion of an act that could be considered as advocacy. Writ, P. 25, 26, 59, 60, 37-39 and Exh. X1. To then pass these same false statements as facts over to the Salt Lake County Attorney's Office (State Actors) is a criminal act. Writ, App. X1. The turning over of a Confidential Sealed List which was under an Order of Secrecy to other parties for purposes forbidden by Order of the Court, is a criminal act and not an act of advocacy. App. of Appellant No. 37-39, filed in the U.S. Court of Appeals for the 10th Cir.. The County

Attorney's Office (State Actors) relied exclusively on material supplied by HR&O/Manning in their suit against Mann. None of Mann's records were ever subpoenaed by the County Attorney's Office, nor did they ever attempt to verify HR&O/Manning's false information.

Defendants' Brief in Opposition, Statement:

> "This claim should have been appealed to the Utah Supreme Court in 1985, . . ."

Argument is totally without merit. Amended Brief of Appellant P. 35-38, filed in U.S. Court of Appeals for 10th Cir. Argument and documentation was presented to the Utah Supreme Court and the Writ was turned down. Amended Brief of Appellant Exh. D,E,F,G,H.

Defendant's Brief in Opposition, asserting that law firms were sued under theory of respondeat superior has no merit. Watkiss & Campbell paid the costs and Wadsworth's salary during litigation, and along with INA paid Wadsworth's and the family clients (Wheelers) jury assessed damages. All of the Wheeler's contracts were with Watkiss & Campbell, and some

of these contracts also covered other attorneys engaged by Watkiss & Campbell for Wheeler in other states.

Deposition of David K. Watkiss, Chairman of the Board of Watkiss & Campbell, June 11, 1986:

> P.28 "Clients are considered firm clients". P.36 "any money won goes into Corporations General Fund", P.37 Wadsworth was on a salary and expected to perform in the best interest of the group", P.38 "Any losses are spread over the Corporation", Exh. 2, P. 2 (attached to deposition) Corporation has exclusive authority to determine; hiring and firing of employees, compensation, employment conditions, acceptance of clients, assignment of cases, fee to be charged, the nature and use of files, and records to be maintained".

Exh.44, P. 7,8,12,13,14, App. of Appellant, U. S. Court of Appeals for the 10th Cir.

Affidavit filed W&C (by Cowley), and Wadsworth, dated April 17, 1986.

"All records destroyed . . ."

Deposition David K. Watkiss P. 65, dated June 11, 1986:

> "Wadsworth had nothing to do with destroying any firm records, of that I can assure you".

Defendants Trost and Young were also guilty of these same acts, which are detailed in

Appellant's Amended Brief filed in the U.S. Court of Appeals for the 10th Cir. and the Writ of Certiorari filed in the Supreme Court of the United States.

Writ, P. 19, 20 21 & App. S-1 (Theft by Extortion). On July 8, 1980 defendant Trost on entering the case for the Wheelers, made an identical extortion offer to that previously made by W&C/Wadsworth. The offer was to gain benefits for **W&C/Wadsworth,** (not Wheelers) and Trost was not counsel of record and never represented W&C/Wadsworth. Writ, P. 21. Trost made a conscious decision to commit perjury as a witness, under oath, while being deposed as a defendant. See also, App. of Appellant filed in the U.S. Court of Appeals for the 10th Cir., Exh. 25, A & B. These actions were criminal acts not acts of advocacy. Trost (a former lawyer with Watkiss & Campbell) was engaged to represent the Wheelers by W&C/ Wadsworth and was advanced corporation monies by Watkiss & Campbell for the Wheeler action, although

W&C/Wadsworth had resigned because the Wheelers hadn't paid them.

Writ, P. 13 & 14. At 0900 hours on Saturday morning, May 12, 1979 (within hours of the shooting of Wadsworth's family client (Wheeler) being shot, Young called the Los Angeles Detectives (State Actors) attempting to link the Manns to the shooting, giving them detailed information he had gathered prior to the shooting, on the Mann family, their cars and the company cars. Writ, P. 13 & 14. On Monday, May 14, 1979, Young made an ex-parte call with Wadsworth on Judge Croft (State Actor). Exh. 36B, App. of Appellant filed in the U.S. Court of Appeals for the 10th Cir. Young contacted Michael Christensen (State Actor), of the Salt Lake County Attorney's Office, (a personal friend), relative to criminal actions against Mann. Exh. 36C, App. of Appellant, filed in U. S. Court of Appeals for the 10th Cir. David Young, not the Salt Lake Attorney's Office, called Mark Wheeler in California on behalf of

the Salt Lake Attorney's Office (State Actors).

As to the Statute of Limitations being passed, brought up by counsel for defendants. The defendants are attempting to reduce the Statute of Limitations from four years to two years for the filing of a civil rights action. (1) Using two years, appellants actions are still under the Statute of Limitations. (2) It is unconstitutional under the Constitution of Utah, Article VI, Sec. 25, to make any Statute retroactive, unless:

> ". . . the Legislature by a vote of two-thirds of all the members elected to each house, shall otherwise direct".

See also Amended Brief of Appellant, P. 33-38, filed with the U.S. Court of Appeals for the 10th Cir.

**CONCLUSION**

God help the nation, and the individual citizen, if the judiciary itself compromises the integrity of the court system and condones criminal actions of a select segment of our society in committing blatant criminal acts, and

then allows these acts to be above the law and the Constitution, under the guise of zealous advocacy, immunity, or any other fraudulent excuses for violating the laws.

Dated this 12th day of December, 1991.

Stanley C. Mann

# APPENDIX A

## ARGUMENT I
## THE COURT ERRED WHEN IT STATED MANN DID NOT ESTABLISH "STATE ACTION" TO CREATE FEDERAL JURISDICTION.

## ARGUMENT I
## THE COURT ERRED WHEN IT STATED MANN DID NOT ESTABLISH "STATE ACTION" TO CREATE FEDERAL JURISDICTION.

It is indisputable that Appellant alleged an on-going conspiracy among all Appellees to deprive Appellant of his Civil Rights. Docket 1, Preliminary Statement ¶¶1,2,&21. The Appellees have not disputed that the Appellee judges are all "State Actors." The Appellant's witness, Salt Lake County Detective, Jerry Thompson, who was unconstitutionally dismissed by appellee Judge Rokich also was a "State Actor," whose testimony and records would have provided corroboration of Appellee Wadsworth's perjured testimony.

The following points are also indisputable, Appendix of Appellant No. 6. Conspirator, Young, contacted the Los Angeles Police Detectives, Appendix of Appellant No. 7 (A,B,C), Conspirators, Young, W&C/Wadsworth contacted "State Actors". (In particular, Wadsworth's statement about Wadsworth's and Young's ex-parte contact with Judge Croft.)

> "I was interested in obtaining facts and information with respect to a possible civil action. We were interested in obtaining facts and information with respect to a criminal action"

Appendix of Appellant No.7C, Wadsworth testified he called the Los Angeles Detectives. Appendix of Appellant No.7D, Wadsworth's testimony regarding his visits to several Salt Lake County Sheriff's officials, U. S. Attorney, etc. Appendix of Appellant No. 8, Deposition of William L. Rencher, U. S. Attorney. Appendix of Appellant No.20, (W&C/Wadsworth's bill) on Pg. 4, line 9503 detailing Wadsworth's visits with Sheriff, Judge Croft, U. S. Attorney & Salt Lake County Deputy Sheriff, "State Actors", line 9510 visit with "State Actor," Deputy Sheriff Shepherd, line 9513 conference with Deputy Shepherd, Sheriff & D. Young. Appendix of Appellant No.26, Wadsworth's deposition Pgs. 15-28, Wadsworth's testimony of his dealings with various "State Actors." Appendix of Appellant No.30, No.31, No.36, No.37 & No.38, details of interaction between HR&O/Manning, Young,

W&C/Wadsworth, Judge Rigtrup, Michael Christensen and others of the Salt Lake County Attorney's Office (all "State Actors"). Wadsworth acknowledged, under oath, that he had access to the court sealed documents. Appendix of Appellant No.51B, Pg.1, line 17 telephone call to LAPD officers, line 18 telephone call to LAPD, line 24 Telephone call to Lt. Gailen and other California LAPD, line 25 contact with Marshall & LAPD officers, line 26 telephone call to LAPD officers, line 27 telephone call to LAPD officers, line 33 Pick up photograph Sheriff's office. Appendix of Appellant No. 51B, Pg.2, line 41 Capt. Nielsen & Riser LAPD, line 44 ltr, etc. to Capt. Nielsen.

All of the Appellees, who claim not to be "State Actors," once they conspire with any other government officials, Fed, State, City, or County officials, their actions are then considered "State Action". In support of Appellant's Argument, Appellant cites the following:

"Allegation of concerted action between private parties and state officials sufficiently conveys "State Action" for purposes of suit under 42 USCS § 1983 Fulton v Emerson Electric Co. (1969, CA5 Miss) 420 F2d 527, cert den 398 US 903, 26 L Ed 61, 2d 90 S Ct 1689."

"Two different methods for satisfying state action requirement of 42 USCS § include (1) if plaintiff establishes nexus between state and particular activity being challenged, that activity will be considered state action; (2) if plaintiff proves existence of symbiotic relationship between state and private party defendant, then any activity of that defendant will be considered state action. Holton v Crozer-Chester Medical Center (1976, DC Pa) 419 F Supp 334, vacated on other grounds (CA3 Pa) 560 F2d 575."

"Generally private citizens and firms are not acting under "color of law" under 42 USCS § 1983, but private party involved in conspiracy, even though not official of state, can be liable under § 1983; thus, private persons jointly engaged with state officials in prohibited action, are acting under color of law for purposes of § since to act "under color of law" does not require that accused be officer of state since it is enough that he is wilful participant in joint activity with state or its agents. Moro v Telemundo Incorporado (1974, DC Puerto Rico) 387 F Supp 920."

"Private persons are subject to suit under 42 USCS § 1983 if they are wilful participants in joint activity with state or its agents. Meyer v Lavelle (1975, DC Pa) 389 F Supp 972."

"Misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority is action taken under color of state law; private persons whose actions would not otherwise be deemed to be under color of state law may come within the purview of 42 USCS § 1983 if they act in concert with state official who does act under color of state law. Timo v Associated Indem. Corp. (1976, DC Okla) 412 Supp 1056."

"Private person who willfully joins with state official to violate another's constitutional rights can be liable under 42 USCS § 1983 even though he is not official of state; this principle has been applied even when private party acting in concert with state official is organization. Cullen v New York state Civil Service Com. (1977, DC NY) 435 F Supp 546, app dismd (CA2NY)566 F2d 846."

"In an action for damages under 42 USCS § 1983, instituted by plaintiff, a deaf mute, who alleged a conspiracy between the plaintiff's sister and spendthrift guardian, a physician, and three social workers to sterilize her against her will, and to remove her child from her custody, the court in Downs v Sawtelle (1978, CA1Me)574 F2d 1, cert den (US)58 L Ed 2d 255, 99 SCt 278,held even if the public

officials were protected by some qualified immunity, such defense was not available to the defendant, plaintiff's sister, whose liability would be determined by the jury without regard to any claim of good faith. The court emphasized that once a showing of concerted action and some constitution deprivation is made, the injured party has an independent cause of action for damages against the private party, whose liability cannot be made to depend upon the status of the official with whom he conspired or upon the defenses available to that official; nor could it be said that a private party, shown to have acted in concert with state officials, may rely upon any type of qualified immunity, whether derivatively or otherwise. To sanction an immunity in favor of a private individual, said the court, could in many instances remove the fragile protection of individual liberties afforded by § 1983, and since private parties are not confronted with the pressures of office or the constant threat facing public officials whatever factors of policy and of fairness militate in favor of extending some immunity to private parties acting in concert with state officials were resolved by Congress in favor of those who claim a deprivation of constitutional rights."

In Martin Hodas, East Coast Cinematics, Inc. v. Lindsay (1979, SDNY) 431 F Supp 637, the court stated that it was clear that in a civil rights action brought under 42 USCS § 1983, a grant of absolute

immunity to defendant prosecuting attorneys would not lessen to any degree the availability of relief to plaintiffs, as these defendants were alleged to have conspired with other private persons to deprive plaintiffs of their constitutional rights, and that if plaintiffs are able to show such a conspiracy, they may, of course, recover damages from those private individuals who are not immune from process."

In Hoffman v Halden (1959, CA9Or) 268 F2d 280 the court stated that the law was clear that when two or more persons conspire to violate the civil rights of another individual, acting under color of state law, if one or more of conspirators is a state officer, then the mere fact that certain of the other conspirators are not state officers constitutes no defense to any of them under the civil rights statutes, particularly 42 USCS § 1983; and whether or not the private defendant acted under color of law is immaterial."

This liability has been held to so in:

First Circuit - Kermit Constr. Corp. v Banco Credito Y Ahorro Ponceno (1976, CA1 Puerto Rico) 547 F2d 1, 44 ALR Fed 542 (recognizing rule); Slotnich v Staviskey (1977, CA1 Mass) 560 F2d 31, cert den 434 US1077, 55L Ed 2d 783, 98 S Ct 1268 (recognizing rule)

Second Circuit - Martin Hodas, East Coast Cinematics, Inc. v Lindsay (1977, SD NY) 431 F Supp 637 (recognizing rule).

Third Circuit - Blake v Delaware City (1977, DC Del) 441 F Supp 1189 (recognizing rule).

Sixth Circuit - Bartlett v Duty (1959, DC Ohio) 174 F Supp 94, 12 Ohio Ops 2d 237, 84 Ohio LAbs 555 (recognizing rule by implication).